



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAME OF INVENTOR	EXaminer DOCKET NO.	CONFIRMATION NO.
09/578,194	05/24/2000	Marcelo Doncelis	0261	5413

Dana Rewoldt
Garst Seed Company
2369 330th Street
Slater, IA 50244

EXAMINER

SCHMIDT, MARY M

DATE	PAPER NUMBER
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DATE MAILED 04/30/2002

Please find below and or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/578,184

Examiner

Mary Schmidt

Applicant(s)

3M Corp.

Art Unit

3600

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 10/01/04, THREE MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

Failure to comply with this communication may result in the application being deemed abandoned. If the applicant desires to avoid abandonment, a reply must be filed within the shortened statutory period. Any reply filed after the expiration of the shortened statutory period will be treated as a late filing, and the application will be subject to the provisions of 37 C.F.R. 1.136.

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL** 2b) ☐ This action is non-final
- 3) ☐ Since this application is in condition for allowance except for formal matters, it is hereby allowed in accordance with the practice under *Ex parte* [unintelligible].

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application
- 4a) Of the above claim(s), _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed
- 6) ☐ Claim(s) _____ is/are rejected
- 7) ☐ Claim(s) _____ is/are objected to
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner
- 10) ☐ The drawing(s) filed on _____ is/are ☐ objected to ☐ not objected to by the Examiner. Applicant may not require that any objection to the drawing(s) be withdrawn.
- 11) ☐ The proposed drawing correction filed on _____ is ☐ approved ☐ not approved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a) or (b) of:
- a) ☐ All ☐ Some ☐ None of
- 1) ☐ Certified copies of the priority documents have been received
- 2) ☐ Certified copies of the priority documents have been received from the foreign office
- 3) ☐ Copies of the certified copies of the priority documents have been received from the foreign office and the application from the International Bureau, PCI Rule 17.2(a)
- * See the attached detailed Office action for a list of the attached priority documents.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) of:
- a) ☐ The translation of the foreign language provisional application has been received
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) of:

Attachment(s)

- 1) ☐ Non-Patent References (PRT) (PTO Form 1449) ☐ Yes ☐ No
- 2) ☐ Non-Patent References in Paper Form (PRT) (PTO Form 1449) ☐ Yes ☐ No
- 3) ☐ Information Disclosure Statement (IDS) (PTO Form 1449) ☐ Yes ☐ No

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DETAILED ACTION

1. The reply filed on February 11, 2002, is not fully responsive to the prior Office action because of the following omission(s) or matter(s): Applicant did not elect either a plant species or a gene species. In the restriction requirement mailed 08/13/01, an election of (1) a plant species and (2) and an ASK gene species was required. In regards to part (2), election of an ASK gene, Applicant replied that the requirement for these species elections was not understood since "there are not different species of genes. There is only the ASK-gene of Group II." In response, dependent claim 6 specifies different species of the AKS group II genes and the specification teaches on page 2 that ASK genes are a multigene family that comprise various members such as alpha, gamma, dzeta, etha and iota. An election of *one* of these species is required since a consideration of the effects (the claimed functions) of modulating expression of any of these species would require an undue burden to search and examine as argued in the previous restriction requirement. In regards to part (1), election of a plant species, Applicant argues that "all plants that have storage organs can be modified. To the extent that an election on this is appropriate the election would be to dicots." In response, claim 14 lists different species of plants in which to express the ASK genes. Since the ASK genes are native to Arabidopsis and the specification does not teach their homologs from the other claimed species, significantly different considerations for search and examination are required for consideration of the claimed functions, modification of storage organs using an ASK gene in the different claimed plant species. For this reason, an election of *one* plant species is required for examination on the

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merits. Please note that an election of one species of plant and one species of ASK gene is not permanent as in the case of a restriction to said species. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Mary M. Schmidt*, whose telephone number is (703) 308-4471.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *John LeGuyader*, may be reached at (703) 308-0447.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Analyst, *Katrina Turner*, whose telephone number is (703) 305-3413.

M. M. Schmidt
April 23, 2002

JOHN LE GUYADER
SENIOR PATENT EXAMINER
TECHNOLOGY CENTER 1600